

No. 11897

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

LILLIE T. HOGUE and ELIAS HOGUE,

Appellants,

vs.

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE
HOUSING EXPEDITER,

Appellee.

BRIEF OF APPELLANTS.

MARSHALL DENTON, JR.,
3519 South Central Avenue, Los Angeles 11,
Counsel for Appellants.

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I.

Jurisdiction.

Appellee, as Housing Expediter of the United States, filed this complaint, containing two causes of action, against appellants seeking to recover treble damage for alleged overcharge of rents and to enjoin the appellants from such future violation.

Appellee claims jurisdiction in the District Court of the United States by reason of Sections 205 (c) and 205 (e) of the Emergency Price Control Act of 1942, as amended, U.S.C.A. Title 50, App. Sec. 901 *et seq.* [p. 2, Tr. of Rec.]

II.

Statement of the Case.

On June 5, 1947, Appellee hereinabove named, a Housing Expediter of the United States, filed his complaint against appellants herein in the United States District Court, Southern District of California, in the Central Division thereof. The complaint contained a first and second cause of action and prayed for judgment against appellants for treble damage for an asserted overcharge of rents by Appellants for the housing accommodations described in the said complaint, in violation of the Rent Regulations for Housing, and likewise sought a preliminary and final injunction enjoining Appellants herein, as defendants in said action, from such future violations.

In their verified Answer Appellants deny any such violation. Further, Appellants admitted receiving rents from tenants in excess of the amount fixed in the rental registration for a single occupant for the room. They justify such act by stating that in the absence of an Order of the Rent Director prescribing the amount of rent which can be collected for extra tenants in a particular room upon which a ceiling had been fixed for a single occupant thereof there could be no violation of rent ceiling.

III.

Specification of Errors.

The Court erred in finding that Appellants had received rents in excess of the maximum rents permitted under the Rent Regulation and Orders of the Rent Director and Ordering judgment for Appellee.

IV.

ARGUMENT.

Summary of Argument.

Point A.

The question on this Appeal is a rent-ceiling Order of the Housing Expediter, which fixes a rent ceiling of \$5.00 per week for a room occupied by one (1) tenant, for living purpose, violated where the landlord charges and collects more than \$5.00 per week when such room is occupied by more than one (1) tenant? [Tr. of Rec. p. 23].

Appellants submit that there is no violation where the landlord charges for extra tenants in a particular room if there was no Order of the Housing Expediter, at the time of the charge, prescribing the rate for such extra tenants. Appellee takes the opposite position [Tr. of Rec. pp. 31-39].

The rooms in question had a rate of \$5.00 per week for one (1) person as registered in the Area Rent Office on March 4th, 1947 [Tr. of Rec. p. 11]. Appellee's exhibits indicate that the premises involved had previously been registered and also disclosed the services the tenants were entitled to under the rental Agreements [Tr. of Rec. pp. 12, 15].

Section 205 (e) of the Emergency Price Control Act of 1942, as amended, U.S.C.A. Title 50, App. Sec. 925, provides:

“(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other

than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In any action under this subsection, the seller shall be liable for reasonable attorney's fees and costs, as determined by the court, plus whichever of the following sums is greater :

(1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or

(2) An amount not less than \$25.00 nor more than \$50.00, as the Court in its discretion may determine; Provided, however, that such amount shall be the amount of the overcharge or overcharges if the defendant proves that the violation of the regulation, order, or price schedule in question was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. For the purpose of this section the payment on receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "Overcharge" shall mean the amount by which consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the administrator may institute such action on behalf of the United States within such one-year period"

How can it be contended that Appellants have collected rent in excess of an Order of the Rent Director when in fact no such Order ever had been made at the time of the overcharge? The regulation was for \$5.00 per week per person for the rooms involved [Tr. of Rec. p. 11]. The record fails to disclose any registration or Order ever having been made and issued by the Rent Director for occupants in excess of one. Appellants submit that until such registration or Order there could be no violation.

It may be submitted that such a situation would constitute grounds to support an injunction to enjoin collection of rent for extra tenants until the landlord had obtained an Order from the Rent Director authorizing an increased charge of rent for extra occupants of a particular room or rooms. However, it is obvious that the right to injunctive relief does not furnish support for a judgment Ordering refund of rent collected which did not violate any Order of the Rent Director which was in existence and effect at the time such rent was collected.

Nor can it be rationally contended that there was a violation of an Order or Registration if the rent collected was for more than one (1) tenant when there existed no Order of the Rent Director specifying the amount of rent which might be charged by the landlord for extra tenants in a particular room.

Conclusion.

It is therefore respectfully submitted that this Court should reverse the decision and judgment of the United States District Court.

MARSHALL DENTON, JR.,

Counsel for Appellants.

